EXHIBIT 77

LITERACY, LANGUAGE, AND LEARNING
INSTITUTE

2010 Hogback Road, Suite #1
Ann Arbor, MI 48105
Phone: 734.973.6001, Fax: 734.973.0750

Expert Report Prepared for Disability Rights Michigan on the Educational Program Provided by Kalamazoo Public Schools to D.L.

Submitted November 15, 2023
by Lauren A. Katz, Ph.D., CCC-SLP

Introduction

Following an extensive review of documents pertaining to the educational program provided by the Kalamazoo Public Schools (KPS) to D.L., an August 2021 neuropsychological evaluation conducted by Chiarina Owens, Ph.D., L.P., and a Zoom meeting with D.L. in November 2023, it is my professional opinion that KPS exercised gross misjudgment in its failed attempt to provide a free and appropriate educational program to D.L. KPS' level of egregiousness in this case is staggering and falls far from the basic standards of educational practice.

Professional Impressions

It is my professional opinion that in addition to meeting the criteria for a Specific Reading Disorder (as documented throughout his KPS records from 3rd through 12th grade and also in Dr. Owens' 2021 neuropsychological evaluation), that D.L. had met and continues to meet criteria for the diagnosis of a Developmental Language Disorder (DLD) (also commonly referred to as a Mixed Receptive-Expressive Language Disorder or Speech and Language Impairment). The International Classification of Diseases (see https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/33269655) defines a DLD as follows:

> *Developmental speech or language disorders arise during the developmental period and are characterized by difficulties in understanding or producing speech and language or in using language in context for the purposes of communication that are outside the limits of normal variation expected for age and level of intellectual functioning. The observed speech and language problems are not attributable to*

regional, social, or cultural/ethnic language variations and are not fully explained by anatomical or neurological abnormalities. The presumptive etiology for Developmental speech or language disorders is complex, and in many individual cases, is unknown.

The Michigan Administrative Rules for Special Education uses the descriptor, "Speech and Language Impairment" (MARSE Rule 340.1710) to represent the diagnosis of a DLD (see https://www.michigan.gov/-/media/Project/Websites/mde/specialeducation/MI-rules/MARSE_Supplemented_with_IDEA_Regs.pdf?rev=31a344bbefe64c8ca8aeb91d97891591).

It is also worth noting that weaknesses in basic reading, reading fluency, reading comprehension, spelling, and writing are frequently present in individuals with DLDs, as oral language weaknesses extend to written language weaknesses when literacy demands emerge beginning in kindergarten (see Boudreau & Hedberg, 1999; Conti-Ramsden et al., 2018; Gillam & Johnson, 1992; Johnson et al., 2010; Law et al., 2013; 2009; Schoon et al., 2010).

I offer the following **SIX** sets of evidence to support my opinion.

1. **On January 5, 2005, at the age of 2-years; 4 months**, D.L. was seen by Early On in Kalamazoo County for concerns reported by his mother about his understanding of language and his absence of talking.

   D.L. was found to be within normal limits in the areas of hearing; vision; body control and movement; thinking, learning, and playing; self-help and self-care, and social and emotional skills. However, **D.L.'s speech-language development was "of concern," as he was functioning in the 13-15 month age range.**

   D.L. was **deemed eligible for speech-language services through Early On**, and it was recommended that he receive an evaluation for special education services in the area of speech-language.

2. On **April 29, 2005, an Educational Goals and Objectives/Progress report documented D.L.'s area of need as Speech and Language Impaired**. It was noted that D.L. was "communicating using nonverbal communication (pulling to items, pointing, facial expressions, etc.), jargon speech, and a few single words." Children beyond the age of three years with these kinds of speech and language deficits are at a higher likelihood for demonstrating later DLD (Desmarais et al., 2010; Ellis & Thal, 2008; Paul, 1996; Rescorla & Lee, 1999; Stoel-Gammon, 1991; Thal & Sizemore, 2007; Tomblin et al., 2003). The annual goal read, "To increase articulation and expressive language skills."

3. **On April 23, 2007, when D.L. was 4-years; 8-months of age**, an IEP Team Report from the Kalamazoo Regional Educational Services Agency (KRESA), provided evidence for **continued eligibility for special education services under the**

Speech and Language Impaired (SLI) disability category. Both language and speech impairments were noted, and goals and objectives in each of these areas were included. At that time, it was noted that D.L.'s "speech is difficult to understand due to inconsistent sound omissions (medial and final), consonant cluster reduction, and misarticulation of /f, v, ch/ along with later developing sound errors /j, r, l, th, z/. These misarticulations along with low language skills impact classroom activities, learning, pre-reading, and communication." Articulation (speech-sound production), receptive language (understanding spoken language), and expressive language (speaking) goals/objectives were included on this document.

4. **Striking, is the absence of the existence of D.L.'s diagnosed SLI in the myriad of IEPs, MET reports, progress reports, report cards, and other documents generated by the KPS from kindergarten through 12th grade**. The only documented mentions of his SLI that I located were on a REED dated September 28, 2020, wherein it was noted he received speech-language services as a preschooler and on a draft of a KPS Manifestation Determination for a meeting held on April 16, 2019 when D.L. was in the 10th grade. On the latter document, under the section entitled, "Relevant Assessment Results," was a handwritten addition that read, "received SLI prior to 3rd grade."

In the virtual disappearance of the existence of D.L.'s earlier diagnosed SLI, it is particularly noteworthy that *throughout his school-age years*, there is an abundance of qualitative data (i.e., teacher reports, progress notes, classroom observations, and grades) that reflect signs and symptoms of SLI with no one from the KPS documenting any need to formally evaluate or even screen for the possibility that his SLI was still present (and it almost certainly was; see Conti-Ramsden, St Clair, Pickles, & Durkin, 2012). It is, therefore, professionally inexcusable for this school district to have failed to evaluate D.L.'s speech and language across so many years. Below, I provide a just a **sampling of documented evidence warranting further evaluation of D.L.'s speech and language skills**.

a. Kindergarten: Marked "needs extra help" in expressing ideas orally, answers questions in complete sentences, listens and follows directions. Trouble with numbers and operations; maps and globes; directional and positional words; distinguishing between yesterday, today, and tomorrow; identifying beginning, middle, and end of stories.
b. 1st grade: Marked "indicates a weak area" in knows the meaning of words encountered frequently in grade-level reading and oral language contexts. Marked as having difficulties with listening attentively, completing work on time.
c. 2nd grade: Marked "guidance needed to perform at grade level/progressing with assistance" in predicts, retells, compares and contrast stories read; identifies and describes different story elements; stays on task/uses time productively; completes homework.
d. 3rd grade: Marked "performance below grade level" in uses correct verb tenses; comprehends narrative text; comprehends informational text; follows

directions and school rules. Marked "guidance needed to perform at grade level" in changes language to fit environments and audience; subject of science; subject of social studies; follows directions and school rules. Teacher wrote, "Seems to become upset and avoid work when difficult."

e. 4th grade: Marked "guidance needed to perform at grade level" in stays on task/uses time productively, follows directions, works independently, completes homework.
f. 5th grade: Marked "extra help and guidance needed" in listens attentively. "Can do a great job when he puts his mind to it!" "Mood continues to affect behavior." Marked "performance below grade level" in follows directions, stays on task/uses time productively.
g. 6th grade: On IEP, "deficits in reading fluency and comprehension" and "problem solving" in math was added as a qualifying criterion for his SLD. MEAP score for Science was "not proficient – the student needs intervention and support to improve achievement; ...indicates minimal understanding and application of the grade level expectations defined for Michigan students."
h. 7th grade: On IEP, "needs some prompting to recall main idea and details within a story."
i. 8th grade: "decline" in math and reading progress is "stagnant." His mother "concerned" about his learning disabilities and that he "receives the support he needs through special education." "Does well with frequent praise and checking in for frustration to eliminate shut down when he's frustrated."
j. 9th grade: Ten out of 15 course grades reported fell in the C+ or below range – he earned C+ in one, C in two, D+ in two, D in two, and F in three.
k. 10th grade: Ten out of 14 course grades reported fell in the C+ or below range – he earned D+ in two, D in one, D- in two, F in five. It was noted, "Doesn't use class time wisely, needs to follow directions and class expectations and work on completing all assignments...does well one-on-one."
l. 11th grade: Six out of seven course grades reported fell in the C+ or below range – he earned D in one, D- in one, and F in four. Reported on behaviors of concerns in following directions.
m. 12th grade: Eleven out of 16 course grades reported fell in the C+ or below range – he earned C+ in two, C in one, C- in three, D+ in one, D- in three, and F in one.

5. There is an extensive body of **empirical research showing that children with DLDs are significantly more likely to develop behavioral difficulties compared to their typically developing peers** (e.g., Fujiki, Brinton, & Clarke, 2002; Katelaars, Cuperus, Jansonius, & Verhoeven, 2010; Lindsay, Dockrell, & Strand, 2007; Tomblin, Zhang, Buckwalter, & Catts, 2000; van Daal, Verhoeven, & van Balkom, 2007). Language skills undergird an individual's ability to regulate emotions, relate to others, express needs and desires, and understand messages, which can lead to frustration and distress (Brinton & Fujiki, 2010; Cole, Armstrong, & Pemberton, 2010; Durkin and Conti-Ramsden, 2010; Yew & O'Kearney, 2012; Im-Bolter & Cohen, 2007; Im-Bolter, Cohen, & Farnia, 2013; Toppelberg & Shapiro, 2000).

Behavioral problems were documented throughout D.L.'s KPS records (e.g., not staying on task, not paying attention, disrupting the work of other students, avoiding work when it was difficult, not trying or giving his best effort, not showing up for class, and cheating, etc.). When I met with D.L., he said, "[School] didn't go well. Being in classes that I had to read and write – I walked out a lot." However, at no point did anyone from KPS recognize or acknowledge that these behaviors might be signaling a broader or more severe disability (that had gone untested).

Moreover, indications throughout his educational records (i.e., from kindergarten through 12th grade) specify that he was motivated, wanted to do well, sought out extra help, actively pursued getting work he had missed, often stayed after school to make up missed assignments or receive extra help, and was often attentive and engaged in small groups and during intervention. As early as 3rd grade, in D.L.'s 2012 MET report, his special education teacher, Mrs. Enicks, reported, "It seems that when the work is at his level, he is much more cooperative." A broad body of research describes the importance of working within a student's "zone of proximal development" (ZPD) or the area wherein the students is able to be successful and learn when given assistance from capable others (see Wass & Golding, 2014). Over and over again, documentation pointed to D.L.'s improved performance and behavior when instruction and intervention were delivered at his level (i.e., in his ZPD accompanied by assistance from a teacher). This was another sign that there might be more to D.L.'s difficulties.

6. Finally, the August 2021 **neuropsychological evaluation conducted by Dr. Owens revealed clear and compelling evidence that while D.L.'s nonverbal problem solving skills are intact, his language skills, as reflected by his Verbal Comprehension scores on the *Wechsler Adult Intelligence Scale – 4th Edition* (WISC – 4) fell significantly below average, at the 3rd percentile.** I am in agreement with Dr. Owens' conclusion that D.L.'s

> *desire to succeed and learn, along with his solid nonverbal problem-solving ability and demonstrated capacity for learning in structured, individualized settings, suggested that he could have acquired a higher level of academic mastery and increased adaptive behavior (ability to independently navigate the demands of his environment) had he been provided proper evaluation and interventions during his formative years.*

What the District Did Do

KPS did identify that D.L. was struggling academically, and some minimal efforts were made in an attempt to address his difficulties. Three primary actions were executed.

1. KPS provided D.L. with special education services, including intervention through an IEP, from 3rd through 12th grade.

2. KPS provided D.L. with Tier 1/general education literacy instruction using the *Harcourt Trophies* curriculum, which has solid research support behind it.

3. KPS provided D.L. with supplemental reading intervention (Tiers 2/3) using the *System 44* and *Read 180* programs, both of which are supported by research. Though there is almost no description relative to *how* these programs were delivered to D.L., when they are delivered with fidelity, students receive instruction and practice BOTH through a computer/online platform AND via direct instruction from a teacher who is making thoughtful use of the data generated in order to target specific areas of weakness. When I met with D.L., I asked him if he could recall the kind of help or instruction he received to assist him with reading, and he responded, "It was not really help. On the computer. Everything on the computer."

These were insufficient to even minimally address D.L.'s needs, as shown below.

What the District Should Have Done

With early identification and provision of speech-language services, children with DLDs have a better chance of meeting with academic success (Snowling et al., 2006; Spaulding, Plante, & Farinella, 2006; Wallace et al., 2015). Without this intervention, outcomes for students can be dire in terms of educational prospects as well as employment (Clegg, Hollis, Mawhood, & Rutter, 2005; Conti-Ramsden & Durkin, 2012; Felsenfeld, Broen, & McGue, 1994; Johnson, Beitchman, & Brownlie, 2010; Lindsay & Dockrell, 2012).

KPS failed D.L. on many levels; however, I focus below on what reasonable public school educators would have done (and what KPS failed to do) relative to identification and treatment of a DLD (or SLI).

1. KPS should have considered D.L.'s early documented diagnosis of SLI. D.L. was found eligible to receive special education services and was provided with an IEP through KRESA, and the KPS documents suggest that either no one from the district was aware of that IEP/those services or that everyone chose to ignore them.

2. With that consideration, KPS should have referred D.L. for formal testing by a speech-language pathologist <u>in kindergarten</u>. Not only was speech and language testing not considered in kindergarten, it was never considered. Moreover, that was in spite of all of the overwhelming evidence discussed above that pointed to a likely SLI.

3. With a speech-language assessment and a very likely diagnosis of and qualification for special education services under SLI, KPS should have provided D.L. with speech-language services.

4. KPS should have provided a full psycho-educational evaluation, including intelligence testing and formal achievement testing across all areas of achievement. This was <u>never</u> done, not just in kindergarten. It was a repeating failure throughout

D.L.'s educational life. In fact, KPS blatantly provided misinformation on every MET that was generated for D.L. Under the section entitled, STATE GUIDELINES, wherein exclusionary factors are supposed to be considered, KPS routinely falsified responses (see a. and b. below) under the exclusionary factors for determining a learning disability:

a. Under (1), D.L. was never formally evaluated in the areas of oral expression, listening comprehension, or written expression.

b. Under (3), it could not be determined that findings were not the result of mental retardation or emotional disturbance, as no psychological measures were ever administered by KPS. On many of these documents KPS specifically indicated that D.L.'s difficulties were not the result of "intellectual ability."

5. KPS should have directly acknowledged D.L.'s lack of or very limited progress over the years and attempted to investigate the reasons behind this lack of progress as well as implement additional or different interventions to address his significant and persistent weaknesses.

What Must be Done Now

There are a very limited number of studies that have examined the effectiveness of intervention in young adults with DLDs (i.e., Campbell et al., 2019; Ebbels et al., 2022; Mathrick et al., 2017; McGregor et al., 2020). At this point, it is not known whether D.L.'s language and literacy skills can be remediated to the degree necessary to attend college or trade school or hold a job and support himself and his family. However, KPS owes it to D.L. to see what can be done to make a positive difference in his life. The following recommendations are offered:

1. It will be important to assemble a team of relevant professionals who can work together to develop a plan that includes goals and objectives as well as necessary services and service providers who can collaboratively work toward helping D.L. secure a long-term career. The team should be comprised of the following professionals:

a. A speech-language pathologist (SLP) who can complete a comprehensive evaluation of D.L.'s oral and written language skills, prioritize treatment areas based on those that will likely be most responsive to intervention and will align best with his future goals, and offer expertise relative to D.L.'s strengths and challenges in the language and literacy domains.

b. A neuropsychologist or psychologist who can offer expertise relative to D.L.'s cognitive and emotional profile and needs.

c. A psychotherapist or social worker who can offer expertise relative to his past trauma and his emotional challenges.

d. A career counselor, or the like, who has expertise in identifying potential career paths for individuals with DLD and/or language-based learning disabilities. With help from this expert, the SLP will be better able to develop specific therapy targets, such as career-related concepts and vocabulary and operational procedures/practices specific to D.L.'s career interests/goals.

e. If needed (i.e., if unable to locate an SLP with literacy expertise), a literacy specialist with expertise in the delivery of *structured literacy* intervention (see https://dyslexiaida.org/what-is-structured-literacy/) as well as evidence-based approaches for promoting reading comprehension and written expression skills.

2. Specific recommendations for language therapy to be provided by an SLP are as follows:

a. Successful intervention outcomes for young adults (older than 16 years) with DLD have targeted preparation for job interviews, word finding, and vocabulary building. Ebbels et al. (2022) argued that language intervention that is focused on building vocabulary knowledge may be the most important or relevant as vocabulary is needed to, "access specific courses related to future careers...They will need to be able to recognize, understand, and use these vocabulary items accurately." It therefore is recommended that the SLP work closely with the career counselor and D.L. to set concept- and vocabulary-specific objectives.

b. Although there is no clear data to suggest the right amount of language intervention (from an SLP) for young adults, the following evidence should serve as a guide:

i. The participants in the Ebbels et al. (2022) study received 4.5 hours of one-on-one intervention over nine weeks, demonstrating some progress with a total of 18-27 words taught in that time period. This works out to about 10-15 minutes of intervention per word.

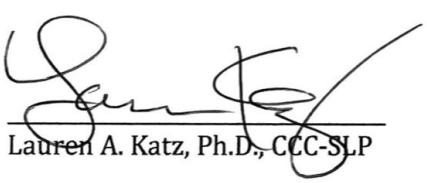
ii. It is estimated that children learn about 2000-3000 words a year (Nagy & Scott, 2000). Children with DLD have deficits in the depth and breadth of their vocabulary knowledge, and research shows that intervention is often required throughout their school-age years to help close that gap (McGregor et al., 2013). McGregor et al. (2020) found that on average, students with DLDs required 39% more time/exposures to vocabulary words compared to their typically developing peers to learn words.

iii. Conservatively, it is therefore reasonable to expect that it would take at least 4,563 hours of time to make up for missed intervention over a 13-year period (i.e., kindergarten through 12th grade, not including D.L.'s two repeated years of schooling)[1].

c. The KPS documents reviewed clearly demonstrate that D.L. has experienced a tremendous amount of academic failure. When I spoke with D.L., he reflected on the reading intervention he received: "I used to think it was so easy, but I failed my tests still." Dr. Owens' report offers clear recommendations relative to the kind of counseling D.L. should receive that will help him to feel better about himself as a learner. And, it will be crucial for the SLP and therapist to work together to ensure the best outcomes possible for D.L.

Conclusion

KPS' cumulative failures to identify and then address D.L.'s DLD (or SLI) are egregious. This case represents a dark case study for new educators on the foreseeable harm to a child from falling so short of the most basic standards of educational practice. Even with the recommendations for what must be done *now,* these historical failures will impact D.L. for life.



Lauren A. Katz, Ph.D., CCC-SLP

Date: 11/15/2023

[1] To derive this number, one could expect a minimum of 5 hours of instruction per school day that would have included direct teaching of or exposure to vocabulary and concepts. I multiplied this time (300 minutes) by 39% to yield the average time a student with DLD would need above and beyond what they would receive in the classroom (117 minutes). I multiplied 117 minutes (per day) x 5 days (per week) x 36 weeks (per year) x 13 years (of schooling): 273,780 minutes/60 minutes = 4,563 hours.

Materials Reviewed

A. January 5, 2005 individualized family service plan
B. April 23, 2007 individualized education program (IEP)
C. April 16, 2012 eligibility recommendation
D. April 17, 2012 multidisciplinary team evaluation
E. April 17, 2012 IEP
F. 2012 teacher anecdotal report
G. March 25, 2013 IEP
H. March 18, 2014 IEP
I. January 27, 2015 review of existing evaluation data and evaluation plan
J. February 10, 2015 IEP
K. February 10, 2015 multidisciplinary team evaluation
L. January 28, 2016 IEP
M. January 25, 2017 IEP
N. January 23, 2018 review of existing evaluation data and evaluation plan
O. January 24, 2018 IEP
P. January 8, 2019 IEP
Q. April 16, 2019 IEP
R. April 16, 2019 positive behavior support plan
S. May 24, 2019 discipline letter to parent
T. October 16, 2019 manifestation determination summary
U. October 23, 2019 behavior intervention plan
V. September 28, 2020 review of existing evaluation data and evaluation plan
W. October 12, 2020 IEP
X. August 20, 2021 confidential neuropsychological report
Y. KPS discipline log and conduct referrals
Z. Selection from transcript of previous due process hearing in January 2022
AA. Cumulative education records provided by KPS

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